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ABSTRACT

Appellate court simulations, also known as "moot court" and "mock Supreme Court," are widely used in U.S. colleges and universities, especially by law schools. Undergraduate appellate simulation is less widely used and less well known. This document describes some U.S. undergraduate appellate simulation activities and focuses on undergraduate moot courts in Texas. Undergraduate moot courts can be classified into a scholastic form and a tournament form. In the scholastic form, students in a class are required to participate as part of class requirements, meaning that students, to a certain extent, compete for grades. In the tournament form, students voluntarily compete against other teams for a trophy or some other reward. Judicial competitions have also been simulated using electronic linkages of contestants. In Texas, two-person teams from a number of colleges and universities compete at three annual competitions using only oral arguments. These competitions have many things in common with law school moot courts, but one major difference is that in Texas, law students usually serve as judges, while law school moot courts usually are judged by actual members of courts. (SLD)

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UNDERGRADUATE MOOT COURT

IN AMERICAN COLLEGES AND UNIVERSITIES

By

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and

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Appellate court simulations, also known as "moot court" and "mock Supreme Court," are widely used for educational purposes in American colleges and universities, especially by law schools.[1] "Moot Court " competitions are also frequently organized outside the United States: in Great Britain,[2] Canada,[3] Australia,[4] New Zealand,[5] and Sweden, Denmark, France,

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[1] No comprehensive survey could be identified by the authors which determines with precision the extent of American appellate simulation. On the other hand, the authors could not identify a single American law school without an appellate simulation program for their doctoral students. The author concludes appellate simulations--or "appellate advocacy"-- are conducted at all American law schools. One indicator of the extent of law school moot court is the number of textbooks on "appellate simulation" marketed to American law students. For example, see Marc Goldstein, Heather Leaf, Syrena Case, Barbara Fiacco, and Joe Gershman (editors), *Introduction to Advocacy : Research, Writing and Argument* 6th ed. (Foundation Press, 1998); David Hill, *Introduction to Advocacy, Brief Writing and Oral Argument in Moot Court Competition* 5th ed. (Foundation Press, 1991); John Gaubatz , *The Moot Court Book: A Student Guide to Appellate Advocacy*, 3rd Ed. (Lexis Law, 1994). The authors researched and catalogued a large number of undergraduate appellate simulation activities in American colleges and universities, as discussed later in this essay.

[2] The authors could not identify any recent survey of the extent, scope and variation of appellate simulation anywhere outside the United States; an unknown percentage of such law schools use appellate simulation. However, "mooting" is apparently very extensively practiced in England and Wales as the authors could not identify any British law school without a moot court program. Another indicator of the extent and fervor of mooting is a British Internet site dedicated to mooting: www.mootingnet.org.uk "Mooting" in Great Britain and other former colonies is almost exclusively undergraduate moot court, as law students in these countries are in pursuit of a baccalaureate degree. However, appellate simulation involving graduate students is also conducted many British universities possessing a graduate law program. Two of the major British tournaments are the English-speaking Union/Observer/Lovett/White Durant National Mooting Competition, and the Blackstone/Herbert Smith/GTI Law Journal National Mooting Competition. A listing of law school oot programs in Great Britain and Wales can be found at the mooting Internet site mentioned above.

[3] According to Dana Kingsbury, University of Saskatchewan Law School, major Canadian tournaments include the Gale Cup Moot, argued in Toronto each year and sponsored by the Canadian Bar Association, as well as the Laskin Moot, the Western Canada Moot, and the Aboriginal Moot Competition.

[4]Anthony Cassimatis, Lecturer, TC Beirne School of Law, University of Queensland, Academic Coordinator of the Jessup International Moot Court Competition for his school of law and co-author of a mooting manual published in Australia, reports that nearly all Australian law schools have moot court programs. Mr. Cassimatis also reported that every law school program has internal moots and that major inter-collegiate tournaments include the Jessup International Moot, with the Australian regional rounds occurring each February; the Australian Law Students Association (ALSA) Moot, held each year at the annual meeting of the ALSA; Butterworths Constitutional Law Moot, the Wilem C. Vis International Commercial Arbitration Moot, a relatively new competition held in March and April; the Family Law Council Moot, hosted by the Family Law Section of the Law Council of Australia, held during July to September. Mr. Duncan Bentley, Associate Professor of Law, Bonds University, Queensland reported that yet another major moot is the International Maritime Moot, usually held in July. Mr. Les McCrimmon, Senior Lecturer University of Sydney School of Law, reports that in addition to various national moot court competitions, law schools in the same region often have regular moots, such as the annual competition between students of the University of Sydney and the University of New South Wales. Ms. Bobette Wolski, Assistant Professor of Law, Bond University School of Law, offered the observation that mooting varies considerably in Australian law schools, ranging from "scholastic" forms to actual tournaments.

[5] Mooting is widely practiced in all five New Zealand law schools, according to Senior Lecturer Scott Optican of the University of Auckland Law School. A National Tournament is conducted annually, as well as specialty moots linked to discrete subjects, such as evidence law, employment law, family law, and Maori issues. Individual law schools also host tournaments, such as the Stroud Shield Moot conducted annually by the University of Auckland.

and Germany, among other countries.[6] "Moot court" originated in medieval England before programs of legal study within English colleges were established, according to several scholars.[7]

In recent years an select group of appellate simulation enthusiasts, mainly law professors in the United States and Australia, have advanced claims that students enjoy certain specific educational rewards from involvement in moot court, including: improved writing and oral communication skills, increased self-confidence, enhanced legal reasoning and critical thinking skills, increased understanding of substantive law, practical preparation for appellate practice, enhanced alumni relations, improved study habits, and increased employment opportunities after graduation from law school.[8] On the other hand, critics of moot court can also be identified, as well as others seeking to improve moot court tournament procedures.[9]

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[6] Moot court tournaments are known to have been held in such countries as Estonia--the Estonian Moot Court Competition; France--the Manfried Lachs Space Law Moot Court, held in Paris in 1994, involving teams from the Netherlands, Finland; France and Germany; Poland--the Centre for Europena Studies Moot Court was held in 1995 involving students from Bulgaria, Poland, Russia and the Ukraine; Denmark--the European Law Moot Court for 2000; Ireland--the Bar Council and Butterworth Ireland Irish Moot Court Competition for 1998/99; Vanuatu--the South Pacific Moot Court Competition, September 24-26, 1999; Germany--the Hannover Moot Court 1999; Sweden--the Sporrong Lonnroth Moot Court Competition, held annually since 1984 (the origins of this tournament are discussed in Jacob W. F. Sundberg, "Comparative Note: Moot Court: An American Idea is a Nordic Setting," 19 *The Justice System J.* 229-233 (No. 2, 1997). Other moot courts the authors have identified: one at the Libera Universita Internatazionale degli Studi Sociali, Rome Italy, required in a class titled, "Introduction to American Law," LIA162, taught by Professor Cohen Abernathy. The authors also note that teams from the University of Hong Kong Law School reportedly competed in the 1998 Jessup International Law Moot Court Tournament.

[7] See Andrew Lynch, "Why Do We Moot? Exploring the Role of Mooting in Legal Education 7 *Leg Educ Rev* at 68-69 (Spring 1996); Robert J. Martineau, "Appellate Litigation Its Place in the Law School Curriculum," 39 *J of Legal Educ* 71-86 (No.1 March 1989); Robert J. Martineau, 1985 Fundamentals of Modern Appellate Advocacy 25-36 (San Francisco: Bancroft-Whtiney); Mohammad Rachid and Charles Knerr, "Brief History of Moot Court: Britain and U.S.," Unpublished paper presented at the Southwestern Political Science Association Annual Meeting, Galveston, Texas: March 16-20, 2000.

[8] American law faculty writing supportive commentary include Michael V. Hernandez, "In Defense of Moot Court: A Response to 'In Praise of Moot Court--Not,'" 17 *Rev of Litigation* 69-89 (1998); William H. Kenety, "Observations on Teaching Appellate Advocacy, 45 *J Legal Educ* 582-586 (No. 4 December 1995); John T. Gaubatz, "Moot Court in the Modern Law School, 31 *J. Legal Educ* 87-107 (1981); Charles Chase McCarter, "Questions and Answers Regarding Moot Court," XII *Stetson L Rev* 759-767 (1983); Andrew M. Low, "Moot Court, " 22 *Colorado Lawyer* 2371-2372 (Nov. 1993); Robert J. Martineau, "If Moot Court Has All the Relevance of a High School Debating Team, Why Do Law Students Cling Tightly to It?" 16 *Student Lawyer* 42-43 (September 1987). Mooting has also been championed by several Australian law faculty. See, for example, Duncan Bentley, "Mooting in an Undergraduate Tax Program," 7 *Legal Educ Rev*. 97-124 (Spring 1996) and Andrew Lynch, "Why Do We Moot? Exploring the Role of Mooting in Legal Education," 7 *Legal Educ. Rev*. 65-96 (No. 1 Spring 1996).

[9] Criticisms of law school moot court are almost exclusively centered upon concerns that the appellate simulation differs greatly with actual appellate court processes. See J. Thomas Sullivan, "Teaching Appellate Advocacy in an Appellate

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AMERICAN UNDERGRADUATE

APPELLATE SIMULATION

Undergraduate appellate simulation is less known and apparently less widely practiced in America than the law school form of appellate simulation. Only a handful of commentators have described or analyzed any aspect of American undergraduate moot court.[10] The balance of this essay outlines a number of American undergraduate appellate simulation activities which have been examined and catalogued into two distinct categories: the ***scholastic*** form and the ***tournament*** form.[11] Common and dissimilar features of these forms of appellate simulation are examined. One of the major American undergraduate moot court tournaments is then described some detail, tournaments sponsored by the Texas Undergraduate Moot Court Association.

Clinical Law Program," 22 *Stetson L.Rev* 1277-1307 (1992); Robert J. Martineau, "Moot Court: Too Much Moot and Not Enough Court," 67 *Amer Bar Assn J*. 1294-1297 (October 1981); Harry H. Almond, Jr. "Strengthening the Philip C. Jessup International Law Moot Court Competition, 4 *ISLA J. of Int'l and Comp Law* 635-667 (Spring 1998); Alex Kozinski, " In Praise of Law School Moot Court--Not," Alex Kozinski, 97 *Colum L R* 178-197 (1997). Judge Kozinksi's article was also published without footnotes in the *American Lawyer* at 91-94 (January 1997). No commentary could be found which examines the costs of moot court activities to participants, faculty, or other parties.

[10]See Charles R. Knerr and Andrew Sommerman, "Undergraduate Moot Court, XXI *NAPLA Notes* 53-56 (No.2, Summer 2000); J. Lon Carlson and Neil T. Skaggs, "Learning by Trial and Error: A Case for Moot Courts," 31 *J of Econ Educ*, 145-155 (Spring 2000); Lindsley Smith, "The Undergraduate Legal Education Course," 2 *Amer. Comm. J*. 1-18 (No 2, 1999); Lucien L. Dhooge, "Appellate Argumentation in the Business Law Classroom," 17 *J. of Legal Studies Educ*, 253-281 (1999); Edward Collins, "The Use of Jessup International Moot Court Cases in Political Science Departments," 90 *Amer. J. of Int'l Law* 809-811 (1983); Phillip J. Cooper, "Undergraduate Moot Court: A Simulation for Undergraduate Courses in Political Science," 7 *Teaching Political Science* 105-118 (October 1979); Edward Collins and Martin Rogoff, "Uses of an Inter-Scholastic Moot Court Competition in the Teaching of International Law," 24 *Political Science* 516-520 (No. 3, 1991); Richard Claude and Paul E. Parker, "A Moot Court for Constitutional Issues," 43 *News for* Teachers of Political Science , 7, 12 (1984); Thomas H. Hensley, "Come to the Edge: Role Playing in a Constitutional Law Class, " XXVI *PS; Political Science and Politics*, 64-68 (No.1, March 1993); Steve Whitaker, "A Role-Playing Simulation of the United States Supreme Court," 1 *Teaching Political Science* 47-58 (No. 1 October 1973); Janice Shaw Crouse and Judie Mosier, "The Extra-Curricular Perspective: The Moot Court," Unpublished paper presented at the Annual meeting of the Speech Communication Association, 65th, Louisville, Ky. (Nov 4-7, 1982). An earlier version of this essay, "Appellate Simulation in American Colleges and Universities," was delivered at the Southwestern Political Science Annual meeting, Galveston, TX., March 15-18, 2000..

[11] Beginning in the summer of 1999, a search for undergraduate moot court activities was initiated by the authors using various Internet search engines, library databases, and "net-working." The authors do not claim to have identified *every* undergraduate moot court activity in America; indeed, previously unknown appellate simulation activities are regularly

The *Scholastic* Form

In the ***scholastic*** form of American undergraduate appellate simulation, students enrolled in an undergraduate class, such as Constitutional Law,[12] Business Law,[13] International Law,[14] Communications or Speech,[15] Criminal Justice,[16] among other academic

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discovered. However, a significant (but unknown) percentage of such activities have been identified and catalogued. Information regarding programs or activities not specifically mentioned in this essay will be welcomed.

[12]Faculty known to require moot court in a Constitutional Law (or related) class include (among others): Professor Kimi King, Department of Political Science, the University of North Texas (Denton 76203-5340, in her PSCI 4200, "Constitutional Law;" Professor Robert Hardgrove, Department of Political Science, the University of Texas at Austin (78712-1087), in his GOV 331L, "Law and Society;" Professor Reginald Sheehan, Department of Political Science, Michigan State University (Lansing 48824), in his PLS 421, "Moot Court and Legal Research in Federal Law;" Professor William Lasser, Department of Political Science, Clemson (Clemson, S.C. 29634-1354), in his POLS 432, Constitutional Law II; Professor Michael Gizzi, Department of Political Science, Mesa State College (Grand Junction, CO. 81502), in his POLS 3412, "American Courts;" Professor John E. Finn, Department of Government, Wesleyan University (Middletown, CN. 06459), in his G203, "American Constitutional Interpretation," and his G250, "Civil Liberties;" Professor Barbara Craig, also of Wesleyan University, has also used moot courts her version of G203, "American Constitutional Interpretation;" Professor Mark Tunick, Honors College, Florida Atlantic University (Jupiter, FL 33458) uses forms of appellate simulation in three classes: POLS 4603, "Honors Constitutional Law," POLS 3691, "Law and American Society," and POLS 3699, "Privacy;" Professor William Schreckhise, Department of Political Science, the University of Arkansas (Fayetteville 72701) requires moot court in his PLSC 4253, "The Supreme Court and the Constitution;" Professor David Marion, Department of Political Science, Hampton-Sydney College (Hampton-Sydney, VA. 23943), requires a moot court in his POLS 430 and 431, "American Constitutional Law I and II classes; Professor Dane Cameron, Professor of Political Science, Department of Political Science, California State University Chico (95929), requires a moot court of students in his Political Science 291G, "Simulation in Public Law;" Professor James Ward, Department of Political Science, the University of California Riverside (92521) uses a moot court in his PS196A/ 197A, "Legal Research, Writing, and Advocacy" class; Professor Bruce NeSmith, Department of Political Science, Coe College, Cedar Rapids, Iowa (52402) requires a moot court in his POL 205, "Religion and American Politics;" Professor Tom Burke, Department of Political Science, Wellesley College (MA 02481) requires a moot court in his Political Science 320, "Inequality and the Law;." Professor Charles Burke, Baldwin-Wallace College, Berea, OH (44017) has required moot courts in both his POL 307, "Constitutional Law," and his POL 08, "Civil Liberties;" Professor Barb Palmer, Department of Political Science, Southern Methodist University, Dallas, reports that she requires a form of mock Supreme Court in her "Judicial Process" class and plans to require a moot court in a Spring 2001 class, "Women and the Law;" Professor Robert Seddig, Political Science, Allegheny College, Meadville, PA (16335), reports he has required moot courts for more than thirty years in his POS 345, "Civil Rights/Liberties" class; Professor Joseph Melulsky, Department of Political Science, St. Francis College, Latrobe, PA (15940) reports requiring a moot court in his "Constitutional Law" class; Professor Julie Novkov, Department of Political Science, the University of Oregon, reported to the author she requires a form of appellate simulation in her PS 485, "Civil Rights and Civil Liberties" classes; Professor Paul Weizer, Department of Social Sciences, Fitchburg State College (MA 01420), requires appellate simulation in several of his classes, including POLS 2700. "Legal Processes," POLS 3500, "Constitutional Law," and POLS 5000 Seminars in the First Amendment and Race, Sex, and the Constitution;" Professor Mark Kelso, Queens College, Charlotte, NC (28274) reports requiring appellate simulation in his Political Science 313, "Constitutional Law and the Judicial System."

[13]Professor Suzy Rogers, College of Business, the University of Wisconsin River Falls (54022-5001), requires a moot court of her students in BLAW 265. Professor Rogers has also produced a videotape of how to stage such a moot court. Professor Joseph Zavaglia, Business Law, Brookdale Community College (Lincroft, NJ 07738) also requires moot courts in his Business Law classes and has also produced a video of how to conduct a moot court. Several Business Law faculty at the College of Business, Plymouth State College, Portsmouth, NH (03264) reportedly require moot courts in one or more of their classes; Professor Lucien Dhooge, College of Business, University of the Pacific (Stockton, CA) also requires appellate simulation in several of his classes.

[14] Faculty regularly using moot courts in an International Politics or International Law class include Professor Barbara Baudot, Department of Political Science, Saint Anselm College (Manchester, N.H. 03102-1310) in her POLS 14, "International Law; " Professor Kurt Gaubatz, Department of Political Science, Stanford University (94305), in his PS

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disciplines,[17] are ***required*** to participate in an appellate simulation as part of the requirements for successfully completing that class. Student performances are evaluated by each instructor; to a certain extent, therefore, students compete over grades. The proportion of a student's final course grade determined by performance in a scholastic moot court varies among instructors, from 5 % to 50% of the final grade.[18]

Significant variation can be noted among these scholastic appellate simulations, reflecting the idiosyncratic preferences of each instructor. For example, although some faulty require the use of a case currently pending before the U.S. Supreme Court,[19] others prefer using a case the Supreme Court has already decided,[20] while yet other faculty rely upon

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142K, International Relations;" Professor Robert Gorman, Department of Political Science, Southwest Texas University (San Marcos 78666-4601), in his POLS 4365, " International Law."

[15] Faculty requiring moot court in Communications or Speech classes include Professor Ken Salter, Communications Studies, San Jose State University, CA 95192-0012, in his COMM 191, "Moot Court Competition," Professor James A. Aune, Communications Studies, Texas A & M University (College Station 77843-4233), in his SCOM 243, "Argumentation and Debate" classes; Professor Karen Shurlds, Department of journalism, University of Arkansas, Fayetteville (72701), requires a moot court of her JOUR 3633, "Communication Law" students. Professor David Timmerman, Department of Speech, Wabash College, requires a moot court in several classes; Professor David Seibert, Department of Speech and Theater, the University of Nevada, Reno, reportedly requires a moot court in one of his speech classes; Professor Jonathan Tankel, Department of Communication, Indiana University-Purdue University Fort Wayne, requires briefs and "presentation of briefs" in his Com 352/JOUR J300, "Mass Communication Law" classes.

[16] Professor David J.W. Vanderhoof, Criminal Justice Studies, the University of North Carolina Pembroke (28372-1510), requires a moot court of students enrolled in CRJ 400, "Criminal Procedure;" Professor Lisa Decker, Department of Criminology, Indiana State University, Terre Haute (47809) requires a moot court; a "Moot Court" class is listed in the course offerings of the Criminology Program of the University of Texas at El Paso.

[17] For example, Professor David Ryden, Department of Political Science, Hope College (Holland, MI 49423) has used moot courts in his "Introduction to Government" classes, as well as Professor Gregory Scott, Department of Political Science, the University of Central Oklahoma, Edmund (73034). Professor Lon Carlson, Department of Economics, Illinois State University, (Normal 61790) requires a form of appellate simulation in three of his economics classes. Professor Edith Greene, Department of Psychology, the University of Colorado, Colorado Springs, requires a moot in her Seminar on Psychology and Law; Professor Franklynn Salimbene, Director of Paralegal Studies, Bentley College, Waltham, MA (02452), requires a moot court in his LA 200 class. Mr. Jim Shine, Adjunct Professor, Social Sciences, the University of Alaska, Juneau (99801) requires a moot court in his Law 310, "Personal Injury and Property Damage" class. Professor Paul G.E. Clemens, Department of History, Rutgers University (New Brunswick, N.J. 08901), requires a moot court in his HIST 01:512-402, "American Constitutional History." Professor Scott Blair, Geological Sciences, Ohio State University (Columbus 43210), requires a moot court in his H431, "Geological Sciences: Science in the Court-room." The author could not find any similar example of a moot court required in a class in a basic science or engineering subject.

[18] The authors have acquired a number of course syllabi. The percentage of the final course grade which is determined by performance in a moot court activity varies from a low of 5% of the final grade to a high of 50%.

[19] Thomas Hensley, Department of Political Science, Kent State University, Ohio (44242), allows his students to choose a pending case before the U.S. Supreme Court. Professor William Schreckhise, Department of Political Science, the University of Arkansas, Fayetteville, reports using an actual case pending before the Supreme Court; Professor Tom Burke, Department of Political Science, Wellesley College (MA 02481), reports using a case pending before the Supreme Court.

[20] Professor Bruce NeSmith of Coe College uses *Chandler v. James* in his "Religion and American Politics" class.

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fictitious or "moot" cases.[21] Some faculty even rely upon a mixture both real and fictitious cases in the same classroom.[22] And, although briefs ands oral arguments are frequently required,[23] other instructors require only oratory.[24]

In most of the scholastic moot courts studied by the authors, students assume roles as either judges or attorneys. However, a few instructors assign additional roles, such as requiring certain students to be "journalists."[25] In some scholastic moot courts, colleagues of the instructor serve as judges, or perhaps members of the local bench, or local practicing attorneys, or various combinations thereof.[26] Another variation is to require the students to assume the roles of judges while teams of local attorneys argue the case.[27]

The Undergraduate *Tournament*

In the undergraduate moot court ***tournament*** teams of students ***voluntarily*** compete against other teams. Performances are therefore motivated by desires to acquire a trophy, or

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[21] Examples of faculty who use fictitious include Professor Lori Johnson, Department of Political Science, the University of California, Berkeley; Professor Ken Salter, Department of Communication, San Jose State University who has several written several case books for students to use, The Trial of Dan White, (1991), The Pentagon Papers Trial, (1975) and The Trial of Inez Garcia (1976), all available for use in a classroom or a tournament situation. Contact the publisher, Market and Systems Interface, .at P.O. Box 1549. El Cerrito, CA 94530.

[22] Professor Charles Burke of Baldwin-Wallace University has used both real and fictitious cases in different classes. Professor Paul Weizer of Fitchburg State College uses both ficticious and real pending cases in the same class.

[23] For examples of faculty who require both briefs and oral argument include Professor James Ward, Department of Political Science, the University of California Riverside; Professor Kimi King, the University of North Texas; Professor David Ryden, Hope College; Professor Bruce NeSmith of Coe College; Professor Charles Burke, of Baldwin-Wallace University; Professor Bill Schreckhise, the University of Arkansas Fayetteville; Professor Mark Kelso of Queens College.

[24] The author and others involved with undergraduate moot court in Texas rely almost exclusively upon oral argument, as no briefs are required in the Texas tournaments.

[25] For example, Professor Robert Hardgrove, Department of Political Science, University of Texas at Austin, uses students judges, as well as Professor Mark Tunick, Honors College, Florida Atlantic University in several classes in which moot court is required. Professor Bruce NeSmith of Coe College also uses students in roles of attorneys and judges, along with Professor Bill Schreckhise of the University of Arkansas at Fayetteville; Professor Barb Palmer of the Department of Political Science, SMU, assigns students to roles as attorneys, amici, judges, and reporters.

[26] Professor Barbara Baudot, Department of Political Science, Saint Anselm College, (Manchester, N.H.) has reported to the author that members of the New Hampshire Supreme Court judge her moot courts; Professor Kimi King of the University of North Texas reports using other faculty and lawyers practicing in the area to judge her moot courts; Professor Ken Salter of San Jose State University has reported that practicing attorneys, mainly alumni of his program, are used as judges; Professor David Marion, Department of Political Science, Hampton-Sydney College, reports using members of the local bar association and alumni attending local law schools as judges in his moot courts.

[27] This variation--using students as judges and local attorneys for oral argument--was reported to the author by Professor Kerry Hunter, Department of Politics and International Relations, Albertson College of Idaho, in his POL 310, "Mock Supreme Court."

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for the achievement of other intrinsically personal rewards.[28] Thirteen regional, statewide, or campus-wide tournaments are known to be regularly organized in America: one in southern California,[29] two in the San Francisco Bay area,[30] another in northern California,[31] and in Illinois,[32] Indiana, [33] Mississippi,[34] North Carolina, [35] Ohio,[36] Oklahoma,[37] and Texas.[38] A new invitational national tournament has been scheduled for January 2001.[39]

These tournaments vary in structure and process. For example, for several of these tournaments, contestants are from a single campus,[40] while other tournaments are inter-collegiate, drawing students from upwards of a dozen different colleges and universities. All

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[28] A small percentage of students receive academic credit--usually one credit on a pass/fail basis-- for participating in moot court tournaments. For example, Howard Payne University offers POLS 3161, "Moot Court" and Hardin-Simmons University offers a similar one credit pass/fail course, PS 2105, "Moot Court." A new one credit course, "Moot Court, " is currently scheduled to be offered for the first time this coming Spring 2001 semester at the University of Texas at Arlington. Professor Mark Kelso, Queens College, Charlotte, N.C., allows his students competing in the North Carolina tournament to enroll in POLS 299, "Experiential Learning in Political Science—Moot Court," a one credit class.

[29] The Stanley Mosk Undergraduate Moot Court Tournament, is organized annually, usually during the summer months, by Professor Jeanne Curran, Department of Sociology, California State University, Dominguez Hills (Carson 90747).

[30] Regular campus-wide tournaments are scheduled at San Jose State University; contact Professor Ken Salter of the Communications Department for further information. A campus wide tournament is also operated by the California Pre-law Association, a student organization, on the campus of the University of California, Berkeley.

[31] The northern California tournament is campus-wide, involving upwards of 50 teams, according to Professor Dane Cameron, Department of Political Science, and are conducted each May at California State University Chico, Cal State Chico (95929).

[32] The Model Illinois Government (M.I.G.) conducts an annual moot court tournament as part of their state government simulation. For information contact Professor John Williams, Political Science, Principia University. The M.I.G. operates an extensive website at ednet.rvc.cc.il.us/~PeterE/MIG/ebmeet.html This website lists the actual cases used in recent years and provides competition rules.

[33]The Wabash College Moot Court Tournament is a campus wide annual tournament organized by Professor David Timmerman, Department of Speech, Wabash College (Crawfordsville, IN 47933).

[34] Professor Gerry Jennings, Political Science Program, Delta State University, Cleveland, MS. (38733) organizes a campus-wide tournament

[35] Professor Daniel Hoffman, Political Science, Johnson C. Smith University, Charlotte NC (28216) regularly organizes a statewide competition.

[36] The Seiberling Undergraduate Moot Court Competition is an annual regional tournament conducted each year attracting competitors from undergraduate programs in Ohio and Pennsylvania. Contact Professor J. Dean Carro, the University of Akron School of Law (OH 44325-2901), for further information.

[37] The Oklahoma Intercollegiate Legislature (O.I.L) Moot Court is part of the activities of a state government simulation. O.I.L. Box 300001 Midwest City, OK. 75140-0001. Another valuable source of information regarding the Oklahoma tournaments is Professor Chris Markwood, Department of Political Science, the University of Central Oklahoma, Edmund.

[38] The Texas Undergraduate Moot Court Association conducts three statewide tournaments annually, as discussed later in this essay.

[39] This new national tournament is to be held at the University of Texas at Arlington in mid-January 2001.

[40]The tournaments at Cal State Dominguez Hills, Cal State Chico, San Jose State University, University of California Berkeley, Wabash University, and Delta State University, are all campus-wide. The Berkeley tournament was inter-collegiate at one point, involving teams from Stanford University, but has waned in recent years to a campus-wide event. Several of these tournament organizers expressed desire to the author to expand the tournament to include contestants of other campuses. All the other tournaments are inter-collegiate.

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but one of the tournaments require two-person teams, with the exceptions of the Oklahoma Inter-collegiate Legislature Moot Court, in which single contestants compete, and the Berkeley tournament, in which teams of three students are permitted. Another important difference is the case: several tournaments focus upon a case currently pending before the Supreme Court,[41] while in others an "open fictitious case"[42] is used, whereas in yet other tournaments a "closed fictitious case"[43] is utilized. Another variation is that in several tournaments students are required to submit written briefs and engage in oral argument,[44] while in other tournaments, contestants are judged only for their oratory.[45]

Variation also occurs in regard to judging. In Illinois and Oklahoma, the tournaments are part of a larger statewide simulation of state government. In the larger simulation students assume such roles as governor, other executive branch officials, state legislators, lobbyists, justices of the state supreme court, and so forth; judging of these two moot courts--held before each state "supreme court"-- can be influenced by the political process unfolding in the larger simulation. In the other tournaments, undergraduate faculty, law students, lawyers, or perhaps members of the judiciary, serve as tournament judges;[46] "simulation politics" in these tournaments are not part of the process.

Only four of the tournaments-- those organized in Ohio and Texas--are associated with law schools. In Ohio, the University of Akron School of Law hosts an annual tournament, the Seiberling Undergraduate Competition, involving students from about a dozen Ohio and

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[41] Both the Seiberling Competition at the University of Akron and the North Carolina tournament both use a pending case before the Supreme Court.

[42] The Oklahoma and Illinois tournaments use an "open" case method: students are given a short problem and then must research supportive cases.

[43] All three of the Texas tournaments are closed to outside research--only the moot case and cases actually provided in the tournament packet may be referred to during oral argument.

[44] Briefs and oral argument are required in the Stanley Mosk tournament, the San Jose State University tournament, the Cal State Chico tournament, and the Illinois and Oklahoma model government tournaments.

[45] Only oral arguments are heard in the Seiberling Competition and the three Texas tournaments.

[46] The University of California Berkeley tournament organizers rely on a combination of judges--law students,

Pennsylvania colleges. In Texas, three law schools have hosted statewide undergraduate tournaments in recent years: the Baylor School of Law, Texas Tech University School of Law, and Texas Wesleyan University School of Law. At these tournaments, law students are the preliminary round judges, and the final rounds are judged by law faculty and alumni.

Internet Competitions

Judicial simulations have recently been initiated using electronic linkages of contestants who are physically separated by great distances, thousands of kilometers. The Teaching Rights Online Project[47] ("THRO") includes a simulated world court proceeding, recent competitions have involved undergraduate students from North America, Europe, and Africa. Another example of the emerging electronic form of competition is a simulation linking undergraduate students of North Carolina and California.[48] Yet another Internet based competition involves Colorado undergraduates.[49] Inter-continental electronic competitions might well become common in the 21st century.

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faculty, local attorneys, and members of the local bench.

[47] The organizers of THRO may be contacted at http//oz.uc.edu/thro. A conference paper on THRO and other materials may be obtained from Professor Howard Tolley, Department of Political Science, University of Cincinnati (Ohio 45221-0375).

[48] Contact Professor David Vanderhoof, Criminal Justice Studies, The University of North Carolina, Pembrooke (28371-1510) for further information.

[49] Contact Professor Michael Gizzi, Department of Political Science, Mesa State College (Junction CO), for further information.

THE TEXAS UNDERGRADUATE

MOOT COURT TOURNAMENTS

Statewide tournaments have been a fixture in Texas since the early 1990s.[50] Two person teams from a number of colleges and universities[51] compete at three annual competitions. Only oral arguments are heard; briefs are not required.[52] Two preliminary rounds[53] are held on a Friday afternoon in which all contestants are required to argue each side of the case, followed by three elimination (or "trophy")[54] rounds, all conducted the next morning, in which the eight highest scoring teams from the preliminary rounds compete in "quarter-final" rounds; the remaining four teams in turn compete in two "semi-final" contests, and then the top two remaining teams compete in a "final" round. This final round, after which one team is declared the tournament winner," is usually concluded by 2 pm. on Saturday afternoon. Every round of the tournament consumes about an hour, with each two person team

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[50] According to Professor Don Gregory, Department of Political Science, Stephen F. Austin University, an effort to organize intercollegiate Texas tournaments collapsed in the mid-1980s.

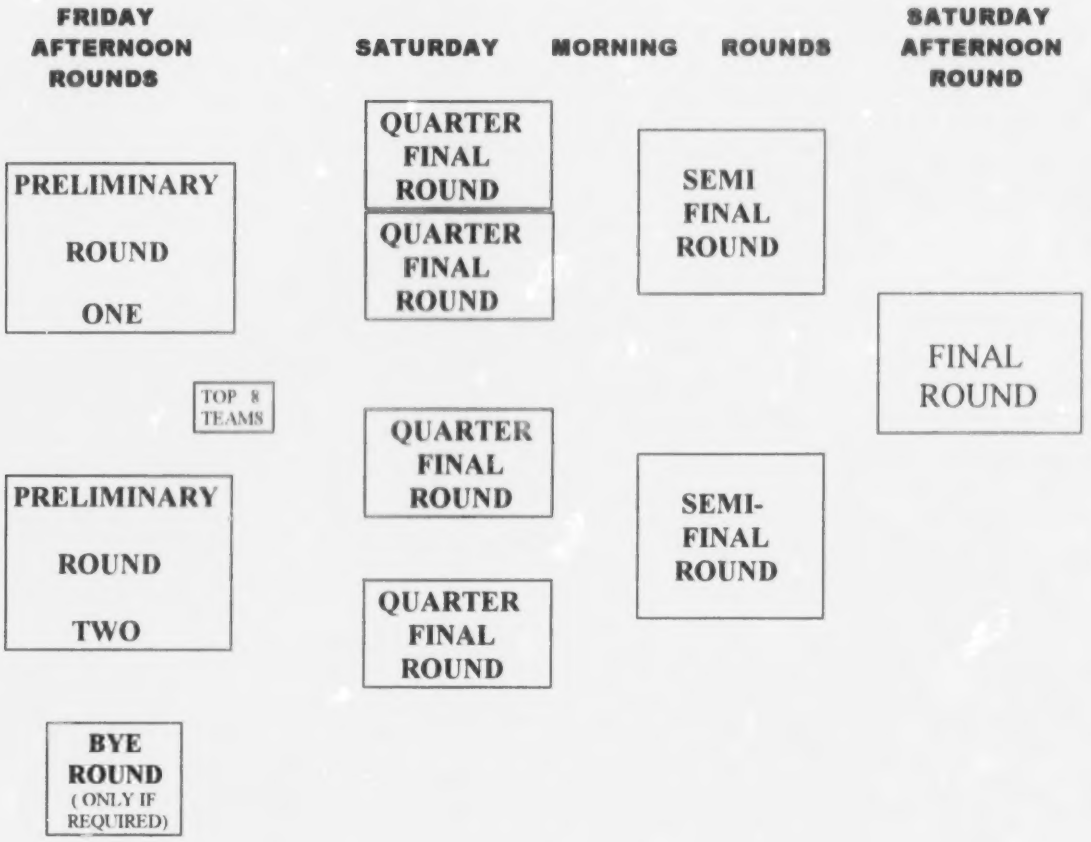
[51] Over the past year, undergraduate students from the following campuses competed in one or several tournaments: Hardin-Simmons University, Howard-Payne University, Lamar University, Mid-Western University, Stephen F. Austin University, Texas A & M University, Texas Wesleyan University, the University of Dallas, the University of North Texas, the University of Texas at Arlington, and the University of Texas at Tyler. In prior years, student teams have also competed from such colleges as The University of Houston Clear Lake, St. Mary's University, Sul Ross University, and Texas Tech University.

[52] Although brief writing is thought to be a valuable learning tool for students, practical considerations, such as the lowered rate of participation should briefs be required, the lack of legal resources at or near some of the smaller colleges, and the practical problem of reading and evaluating these briefs, outweigh the educational gain from requiring them, in the opinion of faculty sponsors.

[53] The maximum number of teams competing in preliminary rounds can be limited by hosting law schools. A typical statewide competition involves thirty to thirty-five two-person teams. In addition, occasionally a third "bye" round is necessary-- if an odd number of teams register, or there is a shortage of judges and/or courtrooms and the host wishes to commodate all teams registered for the tournament.

[54] Students refer to these elimination rounds as "trophy" or "medal" rounds because all participants receive trophies. Those eliminated in quarter and semi-final rounds receive appropriately identified trophies, along with the "runner-up." Trophies are also awarded to the ten highest individual scoring contestants in a Friday evening ceremony.

CHART 1:
TEXAS UNDERGRADUATE MOOT COURT TOURNMENT STRUCTURE



permitted a maximum of twenty minutes of oral argument and questioning by judges. After completion of all rounds--including the elimination rounds--judges score contestants and then review performances with each contestant, in a brief evaluation and feed-back process lasting ten or fifteen minutes.

Case Materials

Cases are developed by faculty from participating Texas colleges and universities,[55] and concern a topic of current events and interest, such as "Teen Curfews," "Physician Assisted Suicide," "Affirmative Action," "Establishment of Religion," and "Right to Bear Arms."[56] A "closed" case approach is used--only the moot case and between six and ten supporting cases

and materials cited therein-- may be relied upon by contestants.[57] Cases are carefully crafted to focus upon two distinctive issues, one for each member of the team. Moreover, the cases are "balanced" to assure that students are judged on their performances, rather than upon the merits of the case.

Judges and Bailiffs/Time-keepers

Judges and bailiff/time-keepers are provided by host law schools. Preliminary, quarter, and semi-final judging is by second and third year law students. Two judge panels are typical in these rounds, again at the discretion of the host. The final round is usually judged by a panel of law faculty, but sometimes the host invites local members of the judiciary or practicing attorneys to participate in this culminating round of the tournament, when the tournament runner-up and finalist teams are announced.

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[55] A key faculty for a number of years in the development of cases has been Professor Virginia Armstrong, Department of Political Science, Hardin-Simmons University, Abilene. Professor Don Gregory, Department of Political Science, Stephen F. Austin University, Nachgodoches, has also been a major contributor to case development. More recently, Mr. Victor Carrillo of Hardin-Simmons University and the author have been actively involved in case development for the Texas tournaments. More recently, Victor Carrillo of Hardin-Simmons University and the author have been actively involved in case development for the Texas tournaments.

[56] The author intends to eventually covert all the recent cases into electronic impulses suitable for transmission via the global Internet to requesting parties.

[57] Although the "open case" method used in many American law school tournaments might be preferred from an educational standpoint, the faculty advisors believe that student participation rates might plummet if students had to research all aspects of their cases. Moreover, participating law schools might be less willing to accept the role of hosts if their students and faculty also had to research the cases. Using a "closed case" approach also affords certain controls or limits upon the extent of argumentation. Advantages outweigh the educational losses from using the "closed case" method, it is believed.

Judging Criteria and Form

A standardized judging form is used for all tournament rounds, reproduced below. Student performances are evaluated in four broad categories: knowledge of the subject matter, response to questioning, forensic skills, and courtroom demeanor, using a point spread of 0 to 25 for each category. Judges are briefed before each tournament; judging instructions, and detailed criteria are distributed to all judges.[58] Consistency in judging is a goal of the judge preparation process.[59]

[58] Judging guidelines and instructions are also available in electronic form and will be forward to interested parties upon request.

[59] A common student complaint is "inconsistency" of judging. Some faculty advisors try to soothe feelings by pointing out hat in the "real world" judges are sometimes inconsistent in their rulings.

TEAM NUMBER _____

TEXAS UNDERGRADUATE MOOT COURT ASSOCIATION

OFFICIAL BALLOT

Round (circle):	Prelim I	Prelim II	Bye	Quarter	Semi	Final
			Time:		Room:	

RANGE OF SCORING

POOR	FAIR	AVERAGE	GOOD	EXCELLENT
1-5	6-10	11-15	16-20	21-25

NAME: _____ NAME: _____

SCORE (1-25 per category) SCORE (1-25 per category)

_____ KNOWLEDGE OF SUBJECT MATTER: _____
Preparation on facts, law, and record; reasoning, organization; full use of time; etc.

_____ RESPONSE TO QUESTIONING: _____
Responsiveness to judges; authoritativeness; ability to think quickly and well and return to argument; etc.

_____ FORENSIC SKILLS: _____
Manner which is relaxed, confident, believable, poised; eye contact; ability to speak without reading notes; grammar; vocabulary; inflection; etc.

_____ COURTROOM DEMEANOR: _____
Professionalism; proper attire; respect toward the court; conversational approach, etc.

_____ **TOTALS** (4-100 points/speaker) _____

COMBINED SCORE : _____

COMMENTS: _____ COMMENTS: _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

Judge (Use Reverse Side if Necessary) Timekeeper

Benefits and costs

Although empirical data is lacking in regard to the benefits of undergraduate moot court, the author is in agreement with sentiments expressed elsewhere, beliefs based solely upon anecdotal evidence: appellate simulation is believed to contribute to increased oral communication skills, contributes to increased case analysis and summarization skills, enhanced legal reasoning and critical thinking, contributes to increased understanding of substantive law, increased poise and self-confidence, contributes to enhanced rates of acceptance in law school programs of legal study, and contributes to an overall improvement in study habits.[60] Faculty also report improved relations with those alumni who volunteer time and energy in preparing students for competitions. Some faculty reports they encourage students to become involved because it is "fun." However, students also are burdened by certain costs of participation: tournament preparation time, emotional and time pressures placed on regular academic work, travel costs, and lowered employment income for those tournaments some distance from campus and home.[61]

[60] Other evaluation criteria also could be used to determine whether a simulation is "successful." For a general discussion, see Charles Walcottt and Anne Walcott, Simple Simulation: A Guide to the Design and Use of Simulation/Games in Teaching Political Science (Washington, D.C.: American Political Science Association, 1976), especially pages 59-61. See also, Sarane S. Babcok, Editor, Simulation Games in Learning (Beverley Hills: Sage Publications, 1968).

TEXAS UNDERGRADUATE MOOT COURT COMPARED WITH LAW SCHOOL MOOT COURT

Although Texas undergraduate moot court tournaments are similar in a number of important characteristics to the tournaments associated with American law school doctoral (J.D.) programs,[62] differences can also be noted, as summarized in Table 1. In common, of course, are fictional clients. Critics of law school moot court have complained that law school students do not identify with or develop emotional bonds with these imaginary moot court "clients" as an attorney might in the real world of appellate practice.[63] A similar complaint can be registered regarding undergraduate moot court contestants.[64]

In both law school and undergraduate moot court, the case problem usually rises to a level of some U.S. Constitutional significance, another point of contention with some critics.[65] And, while some law school moot cases are unlimited in their potential legal scope, undergraduate students focus upon two carefully crafted issues. Perhaps more importantly, law school moot court contestants are required to submit briefs and present oral arguments; at the undergraduate level in Texas only oral arguments are prepared and

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[61] Faculty should pay close attention to the demands placed on students' time of competition participation, for if tournament "success" adversely affects academic work, then students *must* discontinue involvement with moot court.

[62] Law school moot courts also vary considerably. Law students of some schools, such as the South Texas School of Law, participate in a range of moot court activities, such scholastic moot courts, intra-school moots, and also inter-collegiate competitions. Table 1 was based upon "typical" national moot court competitions, such as the American Bar Association annual tournament, in which one author (Professor Sommerman) participated in 1986 and 1987.

[63] For example, see Kozinski, *op.cit.* at 184-185 .

[64] Both authors will attest that undergraduate students must be repeatedly admonished in tournament practice sessions to put a little emotion into their oral presentations; students must be reminded, "Your 'client' has been harmed!!"

[65] These critics correctly complain that most appellate work in the United States occurs in state appellate courts involving issues of record; that relatively few appeals cases in America concern issues of US Constitutional interest. For example, see Kozinski , *op.cit.* at 189-192 and Gaubatz, *op.cit* at 88. Kozinski also argues that it is rare to find two equally "balanced" issues in an actual appellate proceeding.

TABLE 1
TEXAS UNDERGRADUATE MOOT COURT COMPARED WITH APPELLATE PRACTICE AND LAW SCHOOL MOOT COURT

	APPELLATE PRACTICE	LAW SCHOOL MOOT COURT	UNDER-GRADUATE MOOT COURT
CLIENT	Real	Fictional	Fictional
LEGAL PROBLEM	Real	Fictional	Fictional
UNIVERSE OF CASE	Infinite	Sometimes Infinite/ Sometimes Limited	Limited
CLIENT ATTACHMENT	Yes	No	No
LEGAL BRIEF	Yes	Yes	No
COMPLETE RECORD	Yes	No	No
ARGUE BOTH SIDES OF THE CASE	No	Yes	Yes
USE ALL ORAL TIME	No	Yes	Yes
FOCUS OF JUDGING	Merits	Performance	Performance
JUDGES	Real judges	Real Judges and Attorneys	Law Students and Law Faculty

presented. Lack of written briefs in the Texas undergraduate tournaments constitutes a significant difference between the two forms, in the opinion of the authors.

In both forms of moot court, students argue for both petitioner and respondent, students consume every second of allotted time, and judging is based upon performance rather than the merits of the case. In real appellate hearings, critics complain, attorneys

argue only one side of the case, every second of available time is not consumed in oral argument, and judges rule on the merits of the case.[66]

One important difference between the two law school and undergraduate moot court as noted in Chart 1, is the back-ground of judges. American law schools usually recruit actual members of the courts to serve as tournament judges. Undergraduates in Texas tournaments are judged by second or third year law students; only in the final round are law faculty involved, or perhaps local attorneys or occupants of local judgeships.

RESEARCH AGENDA

Research should be undertaken into the extent, scope, evolution, and variation of appellate simulations globally, perhaps using the survey instrument suggested included as Chart 2 below. These data points might be used to categorize all of the known appellate simulations worldwide, and aid in dissemination of information globally.[67]

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[66] See Martineau, *op. cit.*, at 1297 ; Kozinksi, *op. cit*, at. 182-183.

[67] The authors welcome suggested improvements to the data collection instrument.

CHART 2:

POSSIBLE INSTRUMENT FOR DATA COLLECTION REGARDING APPELLATE SIMULATION

ACTIVITY NAME: _____

TYPE OF ACTIVITY: (scholastic or tournament) _____

LOCATION/DATES/FREQUENCY: _____

DEADLINE FOR ENTRY: _____ **CONTESTANTEDUCATION LEVEL:**_____

CONTACT INFORMATION: _____

_____

CASE /ORAL ARGUMENT

CASE TOPIC: _____

"OPEN" OR "CLOSED" CASE?_____ **MAXIMUM # ON TEAM:**_____

DEADLINE FOR SUBMISSION OF BRIEFS :_____

MAXIMUM ORAL ARGUMENT TIMES:

PETITIONER:_____ **RESPONDENT:** _____ **REBUTTAL:** _____

(Do the above times include time consumed by judges in questioning?)

TOURNAMENT STRUCTURE/PROCESS

ELIMINATION PROCESS USED_____

_____

JUDGING CRITERIA GIVEN TO JUDGES?_____ **JUDGING FORM?**_____

JUDGES: (Students, faculty, lawyers),)_____

AWARDS/TROPHIES:_____

Research should also be undertaken to determine with greater precision the educational benefits of appellate simulation--and the costs--to contestants, to their faculty advisors, and perhaps to other parties. Perhaps the claims of moot court enthusiasts would be bolstered by such data, and the critics silenced. A possibility exists that anatomic or procedural differences discovered in such a survey might be explained by inter-cultural differences, or by differences in the origins and evolution of judicial conduct, or even by differences in the processes of legal training. A possibility also exists that divergence's existing twenty-five years ago in appellate simulation structures and processes are gradually diminishing under the twin engines of global economic and legal integration.[68]

[68] A interesting symposium on "Globalization of the American law School" was published in the Journal of Legal Education in 1996 {46 *J.of Leg. Educ* 311-341 (1996}. However, none of the contributors mentioned moot court processes.